

Order

Michigan Supreme Court
Lansing, Michigan

September 24, 2008

Clifford W. Taylor,
Chief Justice

136382

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

TIMOTHY ZAHN,
Plaintiff,

v

SC: 136382
COA: 274994
Genesee CC: 04-079555-NO

KROGER COMPANY OF MICHIGAN,
Defendant,
Cross-Plaintiff-Appellee,

and

F.H. MARTIN CONSTRUCTION COMPANY,
Defendant, Cross-Defendant,
Third-Party Plaintiff-Appellee,

and

CIMARRON SERVICES, INC.,
Third-Party Defendant-Appellant.

On order of the Court, the application for leave to appeal the March 27, 2008 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether a contractual indemnification clause limiting the indemnitor's liability to the indemnitor's own negligence, but including delegation of the indemnitee's duties, can support an award of indemnification arising out of the settlement of a negligence claim made against the contractual indemnitee; (2) whether MCL 600.2956 and the abolition of joint and several liability has had any effect on the potential contractual indemnification liability of employers for injuries sustained by their employees; (3) whether a settlement of a suit brought by an injured employee against alleged tortfeasors may legally be viewed as encompassing the damages attributable to the negligence of the employee's employer, where the employer has no tort liability exposure to the injured employee by virtue of the Worker's Disability Compensation Act exclusive remedy, MCL 418.131(1), but has contractually assumed a duty of care owed by an indemnitee; (4) whether, despite the WDCA's exclusive remedy provision, the third-party defendant employer in this case voluntarily subjected itself to

liability for the payment to its employee of damages attributable to its own negligence by entering into the indemnification agreement; and (5) whether the holding in *Gerling Konzern Allgemeine Versicherungs AG v Regents of the Univ of Michigan*, 472 Mich 44 (2005), has any effect on the appropriate resolution of this case.

The Clerk of the Court is directed to place this case on the January 2009 session calendar for argument and submission. Appellant's brief and appendix must be filed no later than November 10, 2008, and appellees' brief and appendix, if appellees choose to submit an appendix, must be filed no later than December 12, 2008.

The Michigan Association for Justice and Michigan Defense Trial Counsel, Inc. are invited to file briefs amicus curiae, to be filed no later than December 26, 2008. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae, with such briefs to be filed no later than December 26, 2008.



0923

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 24, 2008

A handwritten signature in cursive script that reads "Corbin R. Davis".

Clerk